

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

264B0009

HOUSE BILL NO. 1308

Introduced by: Representatives Cerny, Chicoine, and Kredit and Senators Kloucek, Dennert,
and Hutmacher

1 FOR AN ACT ENTITLED, An Act to authorize the reimbursement of certain testing costs from
2 the petroleum release compensation fund and to revise associated deductible amounts.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That subdivision (7) of § 34A-13-1 be amended to read as follows:

5 (7) "Deductible," the ~~ten thousand dollars, or lesser~~ amount established in this chapter by
6 the secretary of transportation pursuant to this chapter, as an exclusion from
7 reimbursable costs incurred in a corrective action or reimbursable testing costs;

8 Section 2. That subdivision (17) of § 34A-13-1 be amended to read as follows:

9 (17) "Reimburse," any payment made by the fund to a covered party, ~~his~~ the covered
10 party's assignee, or service provider for work performed or materials supplied, as part
11 of a corrective action ~~or, third party claim, or testing activity~~;

12 Section 3. That § 34A-13-8.1 be amended to read as follows:

13 34A-13-8.1. The fund may provide reimbursement of reasonable and necessary costs to an
14 eligible covered party for an approved corrective action in excess of ten thousand dollars or for
15 an approved testing activity in excess of two thousand five hundred dollars and not to exceed

one million dollars for releases reported after April 1, 1988 or for testing activity required after April 1, 1988. Costs incurred for releases reported prior to April 1, 1988, are eligible for reimbursement only to the extent the costs were incurred after that date. Reimbursement to an eligible covered party may not exceed one million nine hundred ninety thousand dollars within any fiscal year as provided in § 4-10-10. Reimbursement may include costs of an approved corrective action and third-party claims for releases reported after April 1, 1990. Reimbursement may not exceed the reasonable and necessary costs of cleanup under the risk-based cleanup method approved by the water management board pursuant to §§ 34A-2-93(13) and 34A-2-99(4).

Section 4. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read as follows:

The cost of any soil or water testing activity for petroleum contamination that is required by a state or federal agency in conjunction with any tank pulling activity as defined in §34A-13-1 is reimbursable from the fund, subject to the deductible requirements and procedures specified in §§34A-13-8.1 and 34A-13-8.2. Such costs are reimbursable whether or not the testing revealed the presence of any pollution or contamination.

Section 5. That § 34A-13-8.2 be amended to read as follows:

34A-13-8.2. The board may waive any percentage it deems appropriate of the deductible if the release is reported after April 1, 1990, and is discovered as a result of an action designed to bring existing equipment into compliance with environmental legal requirements as set forth in §§ 34A-2-99 and 34A-2-101. The board may waive any percentage it deems appropriate of the deductible associated with reimbursement for any approved testing activity.

Section 6. That § 34A-13-9.1 be amended to read as follows:

34A-13-9.1. Reimbursement, without a corrective action plan, may be allowed for tank pulling ~~provided petroleum contamination in the backfill area exceeds standards established by~~

1 ~~the department and further provided that, including testing activity associated with tank pulling,~~
2 if the tank pulling removes petroleum contamination to department standards or if no petroleum
3 contamination was detected. No reimbursement may be provided for upgrade of a release site
4 taken during a corrective action.

5 Section 7. That § 34A-13-40 be amended to read as follows:

6 34A-13-40. The board may provide by rules, promulgated pursuant to chapter 1-26, the
7 limits of reimbursement for testing activity, corrective action, and third-party claims. These limits
8 may not exceed those set forth in § 34A-13-8.1, but may consist of any amount equal to or less
9 than the amounts authorized for releases discovered after April 1, 1990. Any limits provided
10 pursuant to this section shall be in addition to reasonable defense costs, including attorneys' fees,
11 for third-party claims.